

BEVERLY J. STEINBECK

IBLA 76-458

Decided October 18, 1976

Appeal from decision of California State Office, Bureau of Land Management, rejecting oil and gas offer CA 3471.

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases:
Applications: Drawings

Failure to execute fully an oil and gas drawing card (by omitting the zip code) properly results in the rejection of the offer.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases:
Applications: Drawings -- Regulations: Generally --
Regulations: Applicability

Even assuming that a BLM order has the force and effect of a regulation, it cannot be applied retroactively where there are intervening rights or the interests of the United States would be adversely affected. Where there is a no. 2 oil and gas drawing card, it constitutes an intervening right.

APPEARANCES: Beverly J. Steinbeck, Huntington Beach, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Beverly J. Steinbeck appeals from a decision of January 21, 1976, rendered by the California State Office, Bureau of Land Management (BLM), rejecting her oil and gas offer CA 3471. The stated basis of the rejection was that appellant's Simultaneous

Oil and Gas Entry Card was not "fully executed," as required by 43 CFR 3112.2-1, since the space on the card for her zip code had been left vacant.

[1] This Board has held on many occasions that failure to execute fully an oil and gas drawing card properly results in the rejection of the offer. Jerry Van Waardhuizen, 26 IBLA 152 (1976) (state omitted); Ishmael Guerra, 26 IBLA 116 (1976) (state omitted); Ray Granat et al., 1/ 25 IBLA 115 (1976) (state omitted); John R. Mimick, et al., 2/ 25 IBLA 107 (1976) (date omitted); Herbert W. Schollmeyer, 25 IBLA 393 (1976) (date and signature omitted); Albert E. Mitchell, III, 20 IBLA 302 (1975) (state omitted). See Joseph A. Winkler, 24 IBLA 380 (1976) (ambiguity as to corporate status); Ray Flamm, 24 IBLA 10 (1976) (postdating of entry card).

In Albert E. Mitchell, III, *supra*, the Board stated:

[1] The appropriate regulation, 43 CFR 3112.2-1(a), provides that

Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, "Simultaneous Oil and Gas Entry Card" signed and fully executed by the applicant or his duly authorized agent in his behalf. * * * [Emphasis added.]

By notice published in the Federal Register, BLM Form 3112-1 (May 1974) was designated as the correct form of lease offer, 39 F.R. 24523 (1974). That same notice contained the statement that

Failure to complete any part of the card will disqualify the applicant for participation in the drawing and will result in the retention of the \$10 filing fee by the Federal Government as a service charge.

The reason for this policy is clear. In order to process the increasingly large number of simultaneous offers certain procedures must be followed which for their successful operation require complete cooperation

1/ Judicial review is pending.

2 Judicial review is pending.

and accuracy on the part of applicants. See Mountain Fuel Supply Co., 13 IBLA 85, 87 (1973). The regulation and notice makes it clear that no mistakes will be permitted and that the \$ 10 filing fee is "earned" at the time of filing. * * *
[Footnote omitted; Emphasis supplied.]

The obligation to complete the space for the zip code is as mandatory as the obligation to complete the space provided for the State or the parcel number. It is an item specifically required and the consequences of failing to supply it should be the same as those flowing from the failure to furnish any other item of information required by the entry drawing card. Therefore, the rejection of the offer was proper.

[2] However, we must consider the effect of a recent order issued by the Bureau.

On July 16, 1976, the Associate Director of BLM issued Instruction Memorandum 76-377 reading in part as follows:

Normally, one would expect participants in the simultaneous oil and gas drawings to use the correct and complete return address. However, this is not always the case. Because the Bureau has no authority on return addresses, your offices are hereby instructed to ignore all but complete omission of return addresses. Omission of information such as the zip code is not sufficient to reject the offer prior to the drawing.

Process these offers in the normal manner. If an incomplete address results in return by the Postal Service of the notice to the first priority drawee, indicating that the correspondence is not deliverable for any reason resulting from incomplete address, the offer will be made to the next priority holder. Retain returned envelopes indicating cause for inability to deliver.

The thrust of the memorandum is that an incomplete address will not vitiate the priority of an offer unless the notice is returned by the Postal Service as undeliverable.

However, the Board has held that the Bureau has neither the authority nor the duty to correct a probable error in order to make an offer valid. Mountain Fuel Supply Co., 13 IBLA 85 (1973). In that case we stated:

If Bureau personnel "qualified" a deficient first filed offer, such action would work to the detriment of one who subsequently filed an adequate offer.

This brings to the fore the impact of Instruction Memorandum 76-377. It seems clear that at most the instruction is prospective in nature.

Even assuming, arguendo, that the order has the force of a regulation, may it be applied retroactively to breathe life into appellant's offer? In Henry Offe, 64 I.D. 52, 56 (1957), the Department held that a new regulation seemingly conferring a benefit on an applicant may be invoked in his favor if "no one else has any rights which would be impaired" and if no "interests of the United States would be adversely affected by such action." In the case at bar, two other cards were drawn, those of Jacqueline Anderson and Ethel Luning. Cf. Christopher A. Marks, 26 IBLA 84 (1976). The junior offerors have "rights which would be impaired." See Frederick L. Smith et al., 19 IBLA 162 (1975); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974). Moreover, a first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be "cured" by submission of further information. Southern Union Production Co., 22 IBLA 79 (1975). It follows that appellant's offer was properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Douglas E. Henriques
Administrative Judge

